

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of TONYA M. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

*Docket No. 97-459; Submitted on the Record;
Issued October 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for continuation of pay; (2) whether appellant has any disability after March 10, 1993 causally related to her accepted employment injury; and (3) whether the Office properly applied the three-day waiting period for temporary total disability compensation under the Federal Employees' Compensation Act.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for continuation of pay.

Appellant filed a claim on September 27, 1995 alleging that she injured her ankle in the performance of duty on March 7, 1993. By decision dated December 6, 1995, the Office accepted appellant's claim for left ankle strain and found that she was not entitled to continuation of pay as her claim was not timely filed.

Section 8118 of the Act¹ provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title." This latter section provides that "written notice of injury" shall be given within 30 days.²

In the instant case, appellant filed her notice of injury on September 27, 1995 more than two years after her alleged employment incident. There is no provision under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the

¹ 5 U.S.C. § 8118.

² 5 U.S.C. § 8122(a)(2).

employment injury.³ Therefore, the Office properly found that appellant was not entitled to continuation of pay.

The Board further finds that appellant has no disability due to her accepted employment injury on or after March 10, 1993.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

In this case, the Office accepted that appellant sustained a sprained left ankle due to an injury in the performance of duty on or about March 6, 1993. Appellant submitted medical evidence establishing that she was totally disabled on March 9, 1993 and on March 10, 1993 was released to return to full duty. The employing establishment provided a record of absence analysis which indicated that appellant returned to work on March 10, 1993 and continued to work regular hours through March 19, 1993. Therefore, the Office properly found that appellant was not disabled on March 10, 1993 due to her accepted employment injury.

Appellant submitted a series of notes from a physician's assistant dated March 24 to June 30, 1993 finding that appellant was partially disabled. As a physician's assistant is not considered a physician for the purposes of the Act,⁸ these reports do not constitute medical evidence⁹ and are insufficient to establish any period of disability causally related to appellant's accepted employment injury.

In an August 10, 1993 note, a physician, whose signature is illegible, diagnosed left ankle sprain and recommended restricted activity and no walking. This note is not sufficient to establish disability due to appellant's accepted injury six months earlier as it lacks a history of injury and an opinion on the causal relationship between appellant's current condition and disability and her accepted employment injury.

³ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Id.*

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Id.*

⁸ *John D. Williams*, 37 ECAB 238 (1985).

⁹ *Arnold A. Alley*, 44 ECAB 912 (1993).

On August 21, 1993 Dr. J. Antin, a Board-certified internist, noted appellant sustained an injury in March 1993 and stated appellant had walking restrictions since that date. Dr. Antin diagnosed ankle sprain and achilles tendinitis. He stated appellant should not walk for prolonged periods until September 6, 1993. Although this physician indicated familiarity with appellant's history of injury, he was not aware of appellant's work release on March 10, 1993 and her continued employment duties through March 19, 1993. Therefore, this report lacks the necessary factual and medical history to establish a period of disability. Dr. Antin also failed to provide medical rationale supporting continued disability due to appellant's accepted employment injury.

On March 10, April 27 and June 22, 1994, a physician, whose signature is illegible, noted appellant's chronic left ankle pain and recommended light duty. In the initial note the physician reported appellant suffered an inversion injury. Appellant's accepted employment incident did include an inversion injury, however, the physician did not indicate that appellant's condition was work related and did not provide any medical rationale in support of a finding of work-related disability.

Appellant also submitted a work restriction evaluation. However, this form is not dated and therefore cannot establish appellant's disability for a specific period.

An x-ray report dated May 1, 1996 found soft tissue swelling with no definite radiographic evidence of a fracture. This report does not address disability due to the accepted condition.

Dr. Gregory L. Wiemken, a podiatrist, completed a report and diagnosed sprain of the left medial collateral ankle. He noted the history of injury, but failed to provide an opinion on any disability causally related to appellant's accepted employment injury.

As there is no well-rationalized medical opinion evidence establishing continuing disability causally related to appellant's accepted employment injury, the Office properly denied her claim.

The Board further finds that the Office properly applied the three-day waiting period for temporary total disability compensation under the Act.

Section 8117 of the Act¹⁰ provides, "An employee is not entitled to compensation for the first 3 days of temporary disability except -- (1) when the disability exceeds 14 days; (2) when the disability is followed by permanent disability; or (3) as provided by section 8103 and 8104 of this title." Section 8103 of the Act refers to the payment of medical expenses, while section 8104 refers to vocational rehabilitation expenses.

The Board has consistently construed section 8117(1) to require three waiting days when a period of work-related disability does not exceed the statutory period, which currently is reflected in the statute as a 14-day period. Because appellant has not demonstrated disability

¹⁰ 5 U.S.C. § 8117.

prior to March 6, 1993, nor has she demonstrated disability for more than a 14-day period, she is not entitled to disability for the period March 6 to 9, 1993. Accordingly, the Office properly applied the three-day waiting period for temporary total disability under section 8117(1) of the Act.

The October 17, 1996 and December 6, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
October 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member